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6 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

7
8 JAMES S. GORDON, JR., Franklin
County, Washington,

9 Plaintiff,

10 v.

11 SUBSCRIBERBASE HOLDINGS, INC.,
12 SUBSCRIBERBASE, INC., AND JOHN
DOES 1-10

13 Defendants.
14

NO. 08-cv-5037-RHW

**SUBSCRIBERBASE’S MOTION
RE: ATTORNEYS’ FEES AND
COSTS PURSUANT TO CAN-
SPAM (15 U.S.C. § 7706) OR, IN
THE ALTERNATIVE, BRIEF
RE: ATTORNEYS’ FEES AND
COSTS PURSUANT TO CR 11**

15 Defendants SubscriberBASE Holdings, Inc. and SubscriberBASE, Inc.
16 (together, “SubscriberBASE”) respectfully request this Court sanction Plaintiff
17 James S. Gordon, Jr. by having him pay SubscriberBASE’s reasonable attorneys
18 fees and costs.

19 This Court previously decided Gordon would have to pay at least those fees
20 and costs associated with his frivolous motion for sanctions. The Court’s
21 December 11, 2009 Order Granting Defendants’ Motion for Sanctions Pursuant to
22 Rule 11; Denying Motion for Partial Summary Judgment (the “Order”, Dkt. No.
23 104) directed SubscriberBASE to file a request for its fees and costs.

24 With this brief, SubscriberBASE is providing the materials the Court
25 specifically requested in the Order. Given Plaintiff James Gordon’s history of
26 filing a long series of frivolous CAN-SPAM lawsuits, SubscriberBASE
27 respectfully requests this Court consider granting all of its reasonable attorneys’
28 fees and costs as the prevailing party in this litigation, pursuant to 15 U.S.C.

1 § 7706 (g)(4) ([in a CAN-SPAM lawsuit] “the court may, in its discretion . . .
2 assess reasonable costs, including reasonable attorneys’ fees, against any party”).
3 SubscriberBASE has styled its request for compensation under CAN-SPAM as a
4 motion pursuant to CR 54(d)(2)(A) (“A claim for attorney’s fees and related
5 nontaxable expenses must be made by motion . . .”).

6 In the alternative, should this Court decline to award fees and costs pursuant
7 to 15 U.S.C. § 7706 (g)(4), this brief provides evidentiary support for
8 SubscriberBASE’s reasonable attorneys’ fees and costs pursuant to the Order.

9 This motion is based on the Memorandum in Support of SubscriberBASE’s
10 Motion Re: Attorneys’ Fees and Costs Pursuant to CAN-SPAM Or, in the
11 Alternative, Brief Re: Attorneys’ Fees and Costs Pursuant to CR 11, the
12 Declaration of Derek Linke in Support of SubscriberBASE’s Motion Re:
13 Attorneys’ Fees and Costs Pursuant to CAN-SPAM Or, in the Alternative, Brief
14 Re: Attorneys’ Fees and Costs Pursuant to CR 11 and exhibits thereto, and any
15 matter of which the court may take judicial notice.

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17 Dated this 22nd day of December 2009.

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19 Respectfully Submitted,

20 **NEWMAN & NEWMAN,**
21 **ATTORNEYS AT LAW, LLP**

22 By:



23 Derek Linke, WSBA No. 38314
24 Derek Newman, WSBA No. 26967

25 Attorneys for Defendants
26 SubscriberBASE, Inc and
27 SubscriberBASE Holdings, Inc.
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